IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Crl.Rev.Pet.No. 2532 of 2007()

CRA.64/2006 of OF THE ADDL. SESSIONS JUDGE (ADHOC-II) THODUPUZHA

CC.466/2002 of JUDL. MAGISTRATE OF FIRST CLASS, PEERUMEDU

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REVN. PETITIONER:
REVN. PETITIONERS/APPELLANTS/ACCUSED NOS.1 & 4

1. SUKUMARAN, S/O. RAJAN,
KOZHIKKATTAM ESTATE, 1ST DIVISIONAL QUARTERS,
KOZHIKKANAM KARA, ELAPPARA VILLAGE.

2. PUSHPA, W/O. SUKUMARAN,
KOZHIKKANAM ESTATE, 1ST DIVISION QUARTERS,
KOZHIKKANAM KARA, ELAPPARA VILLAGE.

BY ADV. SRI.C.M.TOMY

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M. NAZAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 2532 of 2007

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Dated: 19-11-2007

ORDER

Petitioners who are accused Nos. 1 and 4 in C.C. No. 466 of 2002 on the file of the J.F.C.M.- I, Peermade for offences punishable under Sections 143, 147, 148, 427, 447 ,326, 324, 323 and 294 b read with Sec. 149 I.P.C. challenges the judgment dated 10-10-2006 passed by the Addl. Sessions Court (Adhoc-II), Thodupuzha in Crl. Appeal No. 64 of 2006 filed at the instance of accused Nos. 1 to 4.

2. The case of the prosecution can be summarised as follows:

On 24-1-2002 at about 12 noon the 7 accused persons found themselves into an unlawful assembly and criminally trespassed into the courtyard of P.W.1. A1 voluntarily caused hurt to P.W.1 with a sword stick. A2 voluntarily caused grievous hurt with an iron rod, a dangerous weapon. A3 and A4 voluntarily caused grievous hurt to P.W.1 by hitting him with the blunt portion of a chopper. When P.W.2 interfered, A1 voluntarily caused hurt to him with a sword-stick . A5 to A7 voluntarily caused hurt to P.W.1 . A1 had abused P.W.1 in filthy language. The accused persons destroyed the window glass panes and caused damage to the tune of Rs. 12,000/-.

3. The trial court, after trial, acquitted accused Nos. 5 to 7 but convicted accused Nos. 1 to 4 including the revision petitioners.

4. Accused Nos. 1 to 4 preferred Crl.A. 64 of 2006 before the Sessions Court, Thodupuzha.

5. The lower appellate court has remanded the case to the trial court for fresh disposal after examining C.W. 10, the investigating officer and after producing the wound certificate pertaining to P.W.9.

6. The learned counsel appearing for the revision petitioner

submitted that the purpose of remand was to fill up the lacuna in the evidence for the prosecution. I cannot agree. C.W.10 , the investigating officer was a crucial witness to be examined by the prosecution. The contradictions of P.Ws 2, 3 and 9 were not duly proved through the investigating officer (C.W.10) on account of his non - examination before court. Similarly, the wound certificate of C.W.2 (P.W.9) who was allegedly injured was also not produced by the prosecution. By remanding the case, the lower appellate court was only giving the prosecution an opportunity to examine the investigating officer and also to produce the wound certificate pertaining to P.W.9. However, the direction for fresh trial was unwarranted. The trial court will dispose of the case after examining C.W.10, the investigating officer and after marking the wound certificate of P.W.9 (C.W.2) and examining the doctor, if necessary. It is made clear that the disposal shall be untrammeled by any observations made in the impugned order or of this Court.

This Crl.R.P. is disposed of as above.

V. RAMKUMAR,
(JUDGE)

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